

CONFIDENTIAL
INVESTIGATIVE
REPORT

Prepared by:

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Principal Investigator/Complaint Resolution Officer &
Title IX Officer

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I. Introduction and Investigative Background

[REDACTED] assistant cook, Jorge Acevedo (EID# [REDACTED]). During [REDACTED],¹ PI/CRO Ahmadzai learned of several new potential complaints against Mr. Acevedo. The allegations of numerous other employees in the College [REDACTED] Dining Hall ranged from Mr. Acevedo making inappropriate and sexually suggestive comments about the clothes and bodies of female dining hall employees and female students eating at the dining commons, to making unwelcome statements of a sexual nature directly to female staff. These complainants further alleged that Mr. Acevedo propositioned female employees for sex and that on one occasion Mr. Acevedo made unwanted sexual contact with a coworker. However, because these complaints were [REDACTED], the Title IX Office held those complaints in abeyance while PI/CRO Ahmadzai [REDACTED].

This was not the first time the Title IX Office had received reports about Mr. Acevedo's conduct in the workplace. In April 2008, a student employee reported inappropriate behavior by Mr. Acevedo to the then Title IX Officer, Rita Walker. The student employee reported to Ms. Walker that Mr. Acevedo kissed her without her permission and then told her that if a woman gets raped, it is her fault because of the way she dresses and then indicated that her jeans were too tight. She also reported that Mr. Acevedo stared at female students while biting down on his lip (in lewd gesture). At the time, Mr. Acevedo admitted to the alleged conduct but contended that the rape comment was not made contemporaneously with kissing the student, but on a separate occasion. Ms. Walker's notes indicate that she advised Mr. Acevedo not to discuss the allegations with coworkers, informed him about the campus policy that prohibits retaliation, and warned him that the Title IX Office would "file charges with possibility of dismissal" if his conduct occurred again.

Because of the previous reports against Mr. Acevedo and the numerous new complaints and allegations that emerged during [REDACTED], Title IX Officer Tracey Tsugawa decided to initiate a separate investigation of Mr. Acevedo.² On May 24, 2016, Principal Investigator/Complaint Resolution Officer (PI/CRO) Linda Imonode Skemer hand delivered the investigation notification letter to [REDACTED], College [REDACTED] Dining Hall Unit Manager, who then handed it to Mr. Acevedo at the end of his shift that day. At the same time, Mr. Acevedo was also notified that he was being placed on investigatory leave until June 30, 2016. Mr. Acevedo also received a copy of the requisite policy and procedures.³

¹ [REDACTED].

² In accordance with the *UC Santa Cruz Policy on Sexual Harassment (Interim 2014)*, the policy that is applicable in this case, "[t]he Title IX Officer may also determine that an investigation is warranted without a written complaint, either because of the severity of the allegations reported, or because of the frequency of allegations against the accused, or for any other reason."

³ All documents were provided to Mr. Acevedo in English and in Spanish.

Subsequently, PI/CRO Imonode Skemer interviewed Mr. Acevedo on June 8, 2016. [REDACTED], union representative for American Federation of State, County and Municipal Employees (AFSCME), was present during the interview. PI/CRO Imonode Skemer is a native Spanish speaker and she conducted the interview with Mr. Acevedo in Spanish. During his interview, Mr. Acevedo denied all allegations made against him.

The following additional people were interviewed as witnesses for this investigation:⁴

Witness Name	Date Interviewed
[REDACTED]	November 13, 2015 & May 25, 2016
[REDACTED]	February 26, 2016 & May 25, 2016
[REDACTED]	May 26, 2016
[REDACTED]	May 26, 2016
[REDACTED]	November 13, 2015 & May 26, 2016
[REDACTED]	May 26, 2016
[REDACTED]	May 31, 2016
[REDACTED], Food Service Manager Sr.	November 30, 2015 & June 1, 2016
[REDACTED]	October 19, 2015 & June 7, 2016

After interviewing all the parties and reviewing the evidence, this investigation concludes that there is a preponderance of evidence to support a finding that Mr. Acevedo's conduct constituted sexual harassment and that he has therefore violated the *UC Santa Cruz Policy on Sexual Harassment (Interim 2014)*. The reasons for this determination are explained below.

II. Summary of Events

A. Background

Jorge Acevedo works as an assistant cook at the College [REDACTED] Dining Hall and has been employed at UC Santa Cruz for twelve years. His employment over the years has included working for Custodial Services and in different dining halls during the summers.⁵

The alleged incidents in this investigation span over many years and occurred over the course of Mr. Acevedo's employment with dining services. All the witnesses are dining

⁴ Mr. Acevedo and all of the witnesses were employed in College [REDACTED] Dining Hall at the time of the investigation. Some of these employees were [REDACTED] interviewed during [REDACTED] the fall of 2015; the dates of those interviews are also included here.

⁵ Many dining hall employees are placed on furlough during the summer months because some of the dining halls shut down during the summer. However, employees can elect to work during the summer at one of the open dining halls, which may be different from their regular work location during the school year.

services employees assigned to work at College [REDACTED] Dining Hall, each of whom worked there with Mr. Acevedo at the time of the specific incidents of sexual harassment they each alleged.

A. Allegations and Evidence

Complaint 1

[REDACTED]: Ms. [REDACTED] has worked for the College [REDACTED] Dining Hall for [REDACTED] years, [REDACTED] years in the bakery and [REDACTED] in the dining room. Ms. [REDACTED] reported that when she was first hired in [REDACTED], Mr. Acevedo propositioned her for sex. Mr. Acevedo was assigned to work in the College [REDACTED] Dining Hall kitchen at that time. He approached her and told her she was very pretty and that he did not understand how someone as attractive as she could be unmarried. Mr. Acevedo then went on to say that he understood that because she had no husband, she had needs and he could help her with those needs. Ms. [REDACTED] laughed at his proposition and said, "You are not my type of man. I came to work, not look for a boyfriend." Mr. Acevedo replied, "Don't be offended." Ms. [REDACTED] warned Mr. Acevedo that if he propositioned her again she would tell his wife.⁶

Generally, Ms. [REDACTED] described Mr. Acevedo as "very vulgar." She sometimes overheard him speaking to the other male bakers about female co-workers in a sexually derisive manner. Ms. [REDACTED] said she once heard Mr. Acevedo say, "[REDACTED] is too fat. She is too much grease for these 'eggs'." On another occasion, she overheard him ask [REDACTED], a coworker, about her undergarments. Ms. [REDACTED] said it was Mr. Acevedo's custom to ogle women, both employees and female students in the dining hall. He would often make comments about their clothes and bodies as they passed by, like, "nice legs." She also reported that Mr. Acevedo would often offer massages or use the diminutive form of female employee names either as a flirtation or to imply an intimacy between them that felt uncomfortable and inappropriate to Ms. [REDACTED]. Finally, Ms. [REDACTED] said that the managers were aware of Mr. Acevedo's conduct because others complained about him but that the managers did not do anything in response to the complaints.

Mr. Acevedo: When provided with Ms. [REDACTED] allegations, Mr. Acevedo questioned Ms. [REDACTED] motives for "doing this." He said he felt "surprised" and thought her conduct was "illogical." Mr. Acevedo suggested that if there were any veracity to Ms. [REDACTED]'s claim she would have spoken to a manager as she had done about a previous employee in the past; he said, "If I had done anything, why not go to a supervisor to speak about me?" Mr. Acevedo denied ever propositioning Ms. [REDACTED] or ever even speaking to her as he was assigned to work in the kitchen and she was assigned to work in the bakery.

Complaint 2

[REDACTED] Ms. [REDACTED] is an assistant cook at the College [REDACTED] Dining Hall. She and Mr. Acevedo have worked together in the kitchen for roughly [REDACTED] years. According to Ms. [REDACTED] her interactions with Mr. Acevedo have been uncomfortable. She described Mr. Acevedo as having "a look, it's pure filth. It's like he's disrobing you." She said Mr. Acevedo

⁶ According to Ms. [REDACTED] Mr. Acevedo's [REDACTED]. Ms. [REDACTED] also said that she [REDACTED].

was the kind of person who speaks without thinking and then says, "Oops, I let that slip out." She said some employees find it funny, but not her.

According to Ms. [REDACTED] Mr. Acevedo constantly comments on women's bodies and their clothes; "Look at her, look at the how those pants fit her," or "Look, that one isn't wearing underwear," or "Look at her, she is looking good today" (usually about a coworker). He also asks questions like, "Do you have a boyfriend? Are you single? Are you married?" On one occasion he said to Ms. [REDACTED] "Look, she [another coworker] is wearing granny panties." Mr. Acevedo and other male employees usually carry on in this manner and banter in sexual innuendo, making comments like "vas a Queretaro,"⁷ and Ms. [REDACTED] would tell him that he should not talk like that.

One or two years ago Ms. [REDACTED] reported an incident to College [REDACTED] Dining Hall supervisor, [REDACTED]. Ms. [REDACTED] and a coworker, [REDACTED], carpooled to work together. When they arrived at work one day, Mr. Acevedo said to Mr. [REDACTED] "Me estas peleando mi bicicleta,"⁸ to which Ms. [REDACTED] was very offended. She quickly replied, "You are very mistaken," and Mr. [REDACTED] confronted Mr. Acevedo about his comment. Both Mr. [REDACTED] and Ms. [REDACTED] went to Mr. [REDACTED] to complain about this incident and Mr. Acevedo's conduct in general. According to Ms. [REDACTED] after Mr. [REDACTED] spoke to Mr. Acevedo, his behavior seemed to improve.⁹

Mr. Acevedo: When provided with Ms. [REDACTED] allegations, Mr. Acevedo denied that he ever made the comments about women's bodies and clothes in front of Ms. [REDACTED]. Mr. Acevedo further denied ever having been spoken to by [REDACTED] about any complaints from Ms. [REDACTED] about his behavior.

Mr. Acevedo suggested that he has had differences with Ms. [REDACTED] in the workplace but that he did not know why she would say these things. Mr. Acevedo thought Ms. [REDACTED] might be taking advantage of the investigation to say things against him because it bothers her that he communicates well with supervisors.

Complaint 3

[REDACTED]: Ms. [REDACTED] reported that about 7 years ago, roughly sometime in 2009, Mr. Acevedo offered her a ride home after she worked her regular 12:00 - 8:00 p.m. shift at the College [REDACTED] Dining Hall. They were leaving at the same time so Ms. [REDACTED] readily accepted his offer as she usually relied on public bus transportation to commute to and from work. Ms. [REDACTED] was a [REDACTED] with [REDACTED] and she was always eager to get home [REDACTED] after work. Mr. Acevedo, however, did not immediately drive her home but instead drove to a spot under a tree.

⁷ Translates as "do you want to go to Queretaro (a city in Mexico)?" This is regional slang in Mexico. It is a play on the word "querer," to want. It is a veiled way of asking if someone want to have sex by substituting "querer" for the city of "Queretaro." The understood meaning is "quieres?" or "do you want to?"

⁸ Translates as "You are fighting me/challenging my bike" or "Are you trying to use my bike?" It is derogatory in that the referenced third party is objectified as a bicycle that can be taken for a "ride" and invokes some right of possession or prior right to "ride" at the same time. It implies an existing sexual relationship or expectation.

⁹ During her interview, Ms. [REDACTED] commented that the kitchen has been quiet and peaceful since Mr. Acevedo was placed on leave and that it is now a pleasure for her to come to work.

Mr. Acevedo then said to her, "I am going to have sex with you." Ms. [REDACTED] said, "No. I am a [REDACTED]. I don't want to do this." He then said, "No, I am going to take you." Mr. Acevedo then grabbed Ms. [REDACTED] hand and forced her to touch his penis. Mr. Acevedo said, "Look how hard it is." Ms. [REDACTED] then said, "Don't be like that. Please take me home. I don't like going out with coworkers." Ms. [REDACTED] added, "If you don't take me home, I am going to throw myself out of the car." Mr. Acevedo subsequently drove Ms. [REDACTED] near her home then warned her not to tell anyone. Ms. [REDACTED] said to him, "No Jorgito,¹⁰ I won't tell anyone. I don't want problems."

Ms. [REDACTED] saw Mr. Acevedo the following day at work. He asked her if she had told anyone. She said, "No Jorgito, I haven't said anything." The next day after that a coworker named [REDACTED] asked Ms. [REDACTED] if anything had happened with Mr. Acevedo. Ms. [REDACTED] replied, "No nothing happened with Jorge."

After this incident, Mr. Acevedo continued to offer Ms. [REDACTED] rides home after work. She declined every time and would say, "No. I know how you are."

[REDACTED]: Ms. [REDACTED] said that Ms. [REDACTED] told her about this incident with Mr. Acevedo, that Mr. Acevedo offered to give Ms. [REDACTED] a ride home but that he did not take her directly to her house and that he touched Ms. [REDACTED] legs and breasts. Later, after Ms. [REDACTED] told Ms. [REDACTED] about the incident, Ms. [REDACTED] reprimanded Mr. Acevedo; Mr. Acevedo's response was to say to Ms. [REDACTED] that he did not give a damn and that if his mother offered her "ass," he would "take it."

Mr. Acevedo: When provided with Ms. [REDACTED] allegations, Mr. Acevedo denied the event ever occurred and denied ever having given Ms. [REDACTED] a ride. Mr. Acevedo stated generally, "I don't know why [these women] are inventing things, they are all older. I do not know why they are doing this; I have never had any bad intentions with them."

Complaint 4

[REDACTED]: Ms. [REDACTED] has been employed at UC Santa Cruz for [REDACTED] years. She has worked at the College [REDACTED] Dinning Hall the full duration of her employment. Ms. [REDACTED] has known Mr. Acevedo for a little more than 14 years. They are both cooks and work very closely in the same assigned area along with [REDACTED]. According to Ms. [REDACTED] she and Mr. Acevedo have a good rapport. He calls her "tia"¹¹ and Ms. [REDACTED] reports that he has never been disrespectful to her.

Ms. [REDACTED] said she often "scolds" Mr. Acevedo for his behavior and comments at work. She has warned him repeatedly that "others are listening." Ms. [REDACTED] reported that his inappropriate comments and conduct are a frequent problem at work that occur on a daily basis. Sometimes, when Mr. Acevedo sees the female student employees walk by he says, "mamacita,"¹² "Look, she isn't wearing underwear," "Look at her boobies," or "Look at her butt." When the student employees are nearby cutting vegetables Mr. Acevedo would make comments about how pretty they are. Ms. [REDACTED] also said that Mr. Acevedo looks at

¹⁰ Spanish diminutive for Jorge.

¹¹ "Tia" translates as "Aunt," a term that can be used with a non-relative to indicate a close social relationship and respect.

¹² Translates as "little mama," a term that implies the speaker finds the woman's body attractive.

female student employees in an inappropriate manner and once, when Mr. Acevedo told Ms. [REDACTED] what a “nice ass” a female student had, Ms. [REDACTED] told him to “shut up and stop talking like that.”

Ms. [REDACTED] has observed that after Mr. Acevedo has been offensive towards the female staff, he will offer to help cut the vegetables or give them a massage to “contentarlas” (makeup and keep the peace). Ms. [REDACTED] said that sometimes Mr. Acevedo becomes upset with her when she tells him he is being inappropriate. She said she has asked him to stop “a million times” but he will not stop and does not seem to be able to control himself.

Ms. [REDACTED] said that the managers and all the employees all know about Mr. Acevedo’s behavior but that people just laugh at his behavior. She has reported Mr. Acevedo’s behavior to Mr. [REDACTED] but she did not know if Mr. [REDACTED] or anyone had spoken with Mr. Acevedo because his behavior has continued over time.

Mr. Acevedo: When provided with Ms. [REDACTED] allegations, Mr. Acevedo denied making inappropriate comments about female employees or students. Mr. Acevedo suggested that he has had differences with Ms. [REDACTED] in the workplace and that he doesn’t know why she would say these things. Mr. Acevedo thought that like Ms. [REDACTED] Ms. [REDACTED] may be taking advantage of the investigation to say things against him because it bothers her that he communicates well with supervisors.

Additional Concerns and Information:

[REDACTED]: Mr. [REDACTED] has been a Senior Food Service Manager at the College [REDACTED] Dining Hall since 2008. Although Mr. [REDACTED] has never personally observed Mr. Acevedo behave in a way that is inappropriate, during the time Mr. [REDACTED] has worked as a manager, he has received reports from several female employees who have said that Mr. Acevedo has made them feel uncomfortable or has behaved in an inappropriate manner.

Mr. [REDACTED] general practice has been to address these situations “in house” and to have parties “talk it out.” In all cases Mr. [REDACTED] said that the employees making the reports did not want to “make anything big about it” so Mr. [REDACTED] handled it in house. It was not an isolated incident or single individual who reported that Mr. Acevedo made them feel uncomfortable or behaved in an inappropriate manner but rather multiple people who went to Mr. [REDACTED] with allegations.

Mr. [REDACTED] could recall at least five instances when female employees reported concerns about Mr. Acevedo; he addressed most of these complaint directly with Mr. Acevedo. He did not remember the specific timing of the reports and performance management meetings, but summarized the instances as follows:

- [REDACTED]: Several years ago Ms. [REDACTED] once reported to Mr. [REDACTED] that Mr. Acevedo has said something sexual to her that had a double meaning. She asked Mr. [REDACTED] to talk to Mr. Acevedo and tell him to stop. When Mr. [REDACTED] spoke to Mr. Acevedo about Ms. [REDACTED] concerns, Mr. Acevedo said, “I was just making a joke.” Mr. [REDACTED] told Mr. Acevedo that the jokes were not okay, to which Mr. Acevedo said, “Yes, I did say that. I will make sure it doesn’t happen again.” Mr. [REDACTED] said

that Ms. [REDACTED] and Mr. Acevedo “worked it out” and that Mr. Acevedo apologized to Ms. [REDACTED]

- [REDACTED]: Ms. [REDACTED] once went to Mr. [REDACTED] to complain about Mr. Acevedo’s behavior¹³ but that she also told Mr. [REDACTED] that she “didn’t want to make a big deal, but wanted [him] to understand that it was not okay.”
- [REDACTED]: Several years ago Ms. [REDACTED] went to Mr. [REDACTED] to report an incident when Mr. Acevedo had said something in a “playful, joking” manner but for which she asked Mr. [REDACTED] to talk with Mr. Acevedo; Mr. [REDACTED] stated that the situation seemed to have resolved itself and that when he checked in with Ms. [REDACTED] she told him that Mr. Acevedo had apologized to her.
- [REDACTED]: In the fall of 2015, Ms. [REDACTED] reported to Mr. [REDACTED] that she had seen Mr. Acevedo by the time clock, staring at a student in a sexual manner and making a comment about the student being “hot.” Ms. [REDACTED] told Mr. [REDACTED] that she had told Mr. Acevedo to stop that behavior. Subsequently, Mr. [REDACTED] walked around the area where Mr. Acevedo worked but did not hear any additional comments from Mr. Acevedo.
- [REDACTED]: Mr. [REDACTED] reported that Ms. [REDACTED] came to him upset because Mr. Acevedo had “said something about a bicycle” and “made some comments with double meaning.”

Mr. [REDACTED] generally finds Mr. Acevedo to be professional and polite. Mr. [REDACTED] has not had to speak to Mr. Acevedo more than once about each party. However, the number of complaints has made Mr. [REDACTED] concerned that despite coaching, Mr. Acevedo appears to not “pay attention to what he is doing” and that “something is not clicking.”

Mr. Acevedo: Mr. Acevedo said that Mr. [REDACTED] never spoke with him about any of these allegations and that he had no idea why Mr. [REDACTED] would say otherwise.

[REDACTED]: Ms. [REDACTED] has been employed at UC Santa Cruz as a food service worker in the College [REDACTED] Dining Hall for the past [REDACTED] years. Ms. [REDACTED] stated that she does not interact much with Mr. Acevedo; she sees him in the morning when she arrives and sometimes during her break but otherwise stays “pretty busy during work hours.” Ms. [REDACTED] said that Mr. Acevedo has never made her feel uncomfortable and that she has never heard him make inappropriate comments about female coworkers or students.

When PI/CRO Imonode Skemer asked Ms. [REDACTED] about the report she made several years ago to Dining Hall Manager [REDACTED] regarding Mr. Acevedo’s conduct, she confirmed that she did speak to Mr. [REDACTED] about “Jorge saying disrespectful things to [her].” Ms. [REDACTED] added that she did not remember specifically what Mr. Acevedo had said, and that she has had no problems with him since that time.

[REDACTED]: Ms. [REDACTED] has worked for UC Santa Cruz for about [REDACTED] years and in the College [REDACTED] Dining Hall for the past [REDACTED] years; she sees Mr. Acevedo four days a week but their work schedules are very different. Ms. [REDACTED] said that she and Mr.

¹³ PI/CRO Imonode Skemer attempted to reach Ms. [REDACTED] for an interview but was not able to contact her.

Acevedo are not friends but that they are friendly coworkers. She stated that she has never had problems with Mr. Acevedo, that he always helps her with her work, and that she has never seen him make comments about how others dress or their bodies, or behave in an inappropriate manner towards students or staff.

██████████: Ms. ██████████ has worked for the university for ██████ years and has worked the last ██████ years at the College ██████ Dining Hall; she works a lot with Mr. Acevedo and sometimes they work together most the day. Ms. ██████████ had nothing negative to say about Mr. Acevedo; she said that he has never been disrespectful towards her and that he has never said anything inappropriate to her that has made her feel uncomfortable.

██████████: Ms. ██████████ has worked for ██████ years in the College ██████ Dining Hall; she is an ██████████. She does not see Mr. Acevedo much because their work schedules are very different. Ms. ██████████ said that she has never experienced or seen any inappropriate or disrespectful behavior from Mr. Acevedo, directed either at herself or at students.

III. Analysis and Conclusion

A. UC Santa Cruz Policy

The *UC Santa Cruz Policy on Sexual Harassment* states that the Title IX Office shall investigate the circumstances of an alleged offense to the extent necessary to make a determination as to whether the allegations contained in a complaint constitute a violation of the *UC Santa Cruz Policy on Sexual Harassment*.¹⁶

An investigation carried out by the Title IX Office is not a legal proceeding but is an investigation to determine whether University policy has been violated. The findings in this investigative report do not reach questions of law as to whether the alleged misconduct supports a violation of applicable laws, but instead address whether the *UC Santa Cruz Policy on Sexual Harassment* has been violated. However, guidelines as to what may constitute a violation of the *UC Santa Cruz Policy on Sexual Harassment* may be gleaned from court cases and federal administrative guidance.

The *UC Santa Cruz Policy on Sexual Harassment* requires the Title IX Office to prepare a written report, which includes a determination that either:

- 1) there is *not* a preponderance of evidence to support the allegations and therefore the case is dismissed, or

¹⁴ Ms. ██████████ was interviewed at the request of Mr. Acevedo.

¹⁵ Ms. ██████████ was interviewed at the request of Mr. Acevedo.

¹⁶ The applicable policies in this case are those that were in effect at the various times of the alleged conduct. The alleged conduct occurred over an eight-year period starting in 2008 through 2015. During that period, very little change was made in the policy definitions of sexual harassment. As such, this investigation will utilize the definition included in the 2014 *UC Santa Cruz Policy on Sexual Harassment*. Appendix A includes a list of all the University of California and UC Santa Cruz policy definitions of sexual harassment going back to 2006.

- 2) *there is* a preponderance of evidence to support the allegations and therefore the investigation concludes with a finding of a violation of the *UC Santa Cruz Policy on Sexual Harassment*.

The *UC Santa Cruz Policy on Sexual Harassment* defines **sexual harassment** as:

... unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment is conduct that explicitly or implicitly affects a person's employment or education or interferes with a person's work or educational performance or creates an environment such that a reasonable person would find the conduct intimidating, hostile, or offensive.

When evaluating for the existence of a **hostile environment**, the US Department of Education recommends examining multiple factors.¹⁷ For the purposes of this investigation, this analysis considers the following relevant, adapted factors:

- **The type, frequency, and duration of the conduct:** Is there a pattern of repeated, sustained harassment by the respondent? How severe and pervasive was the alleged harassment? Did the alleged behavior make the complainant feel unsafe, threatened, or intimidated?
- **The identity and relationship between the alleged harasser and complainant:** Is there a significant age, sex, race or other clear differences between the complainant and respondent that generates a significant power imbalance between the complainant and respondent?
- **The location of the incidents, context in which they occurred, and the number of individuals involved:** Did the incidents take place in secluded or limiting locations (e.g., a classroom, bathroom, locker room) where the complainant could not avoid the respondent? Did the incidents take place in public areas in front of large numbers of people, contributing to the humiliation of the complainant?

In the end, an investigation must consider “the totality of the circumstances in which the behavior occurs” to determine whether a hostile environment exists.

B. Findings of Fact

In order to determine whether a violation of the *UC Santa Cruz Policy on Sexual Harassment (Interim 2014)* has occurred, a two-part analysis is required. First, this investigation must determine whether it is more likely than not that the conduct alleged by each of the complainants occurred. Then, whether the conduct, if substantiated, rises to the level of sexual harassment (i.e., created a hostile environment), as defined by the *UC Santa Cruz Policy on Sexual Harassment*.

¹⁷ Adapted from the Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, U.S. Department of Education, January 2001.

Complaint 1

Ms. [REDACTED] alleged that sometime during the [REDACTED] school year when she was first hired, Mr. Acevedo propositioned her for sex. Ms. [REDACTED] further alleged that Mr. Acevedo routinely makes inappropriate comments about the bodies and clothing of female staff and female students and that Mr. Acevedo otherwise often engages in sexually harassing conduct by using sexually suggestive language and offering massages to female staff. On one occasion Ms. [REDACTED] heard Mr. Acevedo say, "[REDACTED] is too fat. She is too much grease for these 'eggs'," and on another occasion she overheard him ask a female coworker about her undergarments. Ms. [REDACTED] further alleged that it is Mr. Acevedo's custom to ogle women, both employees and female students in the dining hall, and comment about their clothes and bodies as they passed by.

Mr. Acevedo did not deny making inappropriate comments or engaging in harassing conduct. His response to the investigator when presented with Ms. [REDACTED] allegations was that he had "never said anything to [Ms. [REDACTED]] Mr. Acevedo furthermore completely denied Ms. [REDACTED] allegation that he propositioned her. He contended that if her allegations had merit she would have reported him to a manager.

This investigation found Ms. [REDACTED] to be credible and without motivation for fabricating her allegations. [REDACTED] and the possible negative [REDACTED] impact of coming forward with allegations [REDACTED] might have easily deterred her from reporting her allegations. In addition, during her interview Ms. [REDACTED] expressed hesitation about coming forward because of her previous experience with reporting harassment to a manager that brought about no change. In response to her complaint about a male coworker's comment about her vagina, the manager told Ms. [REDACTED] that "It's our culture, this is how men talk."¹⁸ She felt that managers were aware of Mr. Acevedo's conduct because she knew others had complained about him, but she did not feel managers would do anything if she reported Mr. Acevedo. The fact that Ms. [REDACTED] came forward despite possible negative repercussions [REDACTED] and despite having received no response from managers in the past strengthens her credibility.

Moreover, this investigation found indirect corroboration of Ms. [REDACTED] allegations in the statements of [REDACTED] and [REDACTED] both of who came forward with nearly identical complaints about Mr. Acevedo's conduct. Ms. [REDACTED] reported that Mr. Acevedo made inappropriate comments about women's bodies and their clothes on a daily basis. Ms. [REDACTED] allegations that Mr. Acevedo offered female employees massages were corroborated Ms. [REDACTED] report that after Mr. Acevedo had been offensive towards female staff, he would offer to be helpful and cut the vegetables or give them massages.

In contrast, this investigation found Mr. Acevedo's contention that if Ms. [REDACTED] allegations had merit she would have reported to a manager to be unpersuasive and not relevant in determining whether the alleged conduct occurred. A victim of workplace sexual harassment is not required to report to a supervisor or manager to validate her claims. Given the strength of Ms. [REDACTED] creditability, lack of motivation to fabricate her

¹⁸ Ms. [REDACTED] did not specify when she complained or to which manager.

allegations, and the statements of other witnesses with very similar complaints, this investigation finds that it is more likely than not that Mr. Acevedo propositioned Ms. [REDACTED] for sex and made inappropriate comments about the bodies and clothing of female staff and female students at work.

Complaint 2

Ms. [REDACTED] alleged that Mr. Acevedo would stare at her and other women inappropriately and made inappropriate comments about the bodies and clothing of female staff and students. She further alleged that Mr. Acevedo made unwelcome comments to her, and that he engaged male kitchen staff in inappropriate conversations full of sexual innuendo. Ms. [REDACTED] shared specific examples of the type of comments she heard Mr. Acevedo make: "Look at her, look at how those pants fit her," "Look, that one isn't wearing underwear," "Look at her, she is looking good today" (usually about a co-worker), "Look, she is wearing granny panties." These examples of inappropriate comments were corroborated by the reports of other witnesses during the course of this investigation. Ms. [REDACTED] reported that it was Mr. Acevedo's custom to ogle women, both female employees and female students in the dining hall, and comment about their clothes and bodies as they passed by. Ms. [REDACTED] general description of the character of Mr. Acevedo's comments (about their clothes and bodies as they passed by) and Ms. [REDACTED] specific examples ("how those pants fit her," "isn't wearing underwear," "wearing granny panties") are consistent. Ms. [REDACTED] also provided examples of inappropriate comments she heard Mr. Acevedo make such as, "Look, she isn't wearing underwear," "Look at her boobies," or "Look at her butt" that match the character and tone of the comments reported by Ms. [REDACTED]. This independent corroboration by two other witnesses with reports about comments similar in form and character give credence to Ms. [REDACTED] allegations.

Mr. Acevedo did not deny making inappropriate comments about female employees or students; rather, he only denied he ever made the comments in front of Ms. [REDACTED]. "I don't know anything about this. I've never talked this way in front of her."

Ms. [REDACTED] further alleged that Mr. Acevedo made an inappropriate comment of a sexual nature to a male coworker about her in her presence. Specifically, Ms. [REDACTED] reported that Mr. Acevedo said, "me estas peleando mi bicicleta"¹⁹ to a male coworker with whom Ms. [REDACTED] carpooled. Ms. [REDACTED] immediately reported the incident, as well as other inappropriate sexual innuendo, to [REDACTED], a College [REDACTED] Dining Hall manager. Mr. [REDACTED] remembered receiving a complaint from Ms. [REDACTED] about a comment "about a bicycle" and that "[Mr. Acevedo had] made some comments with double meaning." Ms. [REDACTED] said that after Mr. [REDACTED] spoke with Mr. Acevedo, his conduct seemed to improve. In contrast, Mr. Acevedo denied ever having spoken to Mr. [REDACTED] about the incident or his conduct.

This investigation found no motivation for Ms. [REDACTED] to fabricate such a specific complaint about Mr. Acevedo, one which was corroborated by Mr. [REDACTED]. Similarly, Mr. [REDACTED] has no motivation to fabricate a complaint by Ms. [REDACTED] against Mr. Acevedo. As a supervisor Mr. [REDACTED] is in position to receive employee complaints; he in fact shared that he

¹⁹ As stated above in footnote #9, this comment has sexual connotations that suggest some prior right to "ride," as a way males assert priority in amorous conquests.

received multiple complaints about Mr. Acevedo, most of which were subsequently verified by the complaining witnesses during this investigation. In contrast, Mr. Acevedo only offered denials as a response to Ms. [REDACTED] complaints. Given the consistency of Ms. [REDACTED] complaints with those of other employees, and the extemporaneous nature of Ms. [REDACTED] report to Mr. [REDACTED] this investigation concludes that it is more likely than not that the alleged conduct the staring and inappropriate comments occurred.

Complaint 3

Ms. [REDACTED] alleged that Mr. Acevedo propositioned her for sex and engaged in unwelcome touching of a sexual nature. Specifically, she alleged that roughly 7 years ago, sometime in 2009, she accepted a ride home after work from Mr. Acevedo. Rather than drive her home, he drove her to a spot under a tree where he propositioned her for sex. She alleges that when she declined to have sex with him, he grabbed her hand and placed it on his erect penis. This investigation found that the specificity of Ms. [REDACTED] complaint enhanced her credibility and stood in stark contrast to Mr. Acevedo's complete denial that the incident occurred or that he had ever given Ms. [REDACTED] a ride home. Moreover, this investigation found no motivation for Ms. [REDACTED] to devise a complaint with such detail about Mr. Acevedo. In addition, Ms. [REDACTED] corroborated Ms. [REDACTED] account and additionally stated that she even reprimanded Mr. Acevedo after she learned about the incident. Given the strength of Ms. [REDACTED] credibility, the corroborating statement of Ms. [REDACTED] and Mr. Acevedo's past history of inappropriate sexual physical contact with a student employee, this investigation finds that it is more likely than not that the alleged conduct occurred.

Complaint 4

Ms. [REDACTED] alleged that Mr. Acevedo engaged in inappropriate comments and conduct of a sexual nature at work. She described the conduct as "a frequent problem at work" that occurred on a daily basis; she reported these allegations in spite of the fact that she and Mr. Acevedo have good rapport and that Mr. Acevedo calls her "tia." Ms. [REDACTED] also indicated that on several occasions she has "scolded" Mr. Acevedo for his behavior and comments at work and that sometimes Mr. Acevedo has become upset with her when she tells him he is being inappropriate. Nonetheless, Ms. [REDACTED] stressed that Mr. Acevedo has never been disrespectful to her.

One incident in particular, reported by Ms. [REDACTED] involved Mr. Acevedo staring at a female student employee in a sexual manner and making a comment that she had "nice ass." Mr. [REDACTED] corroborated this incident when he told this investigation that Ms. [REDACTED] had reported this incident to him.

When provided with Ms. [REDACTED] allegations and Mr. [REDACTED] corroborating statements, Mr. Acevedo again denied ever making inappropriate comments about female employees or students and denied ever speaking with Mr. [REDACTED] about these allegations. Nonetheless, this investigation finds no reason for either Ms. [REDACTED] or Mr. [REDACTED] to manufacture statements against Mr. Acevedo, particularly Ms. [REDACTED] who has a positive relationship with Mr. Acevedo and who does not hesitate to reprimand Mr. Acevedo when he behaves or speaks in an inappropriate manner. As such, this investigation finds that it is more likely than not that the alleged conduct occurred.

Analysis and Conclusion

In order to find a violation of the *UC Santa Cruz Policy on Sexual Harassment*, this investigation must determine whether Mr. Acevedo's conduct constituted

unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature . . . that [1] explicitly or implicitly affected employment **or** [2] interfered with work performance **or** [3] created an environment such that a reasonable person would find the conduct intimidating, hostile, or offensive." (Emphasis added.)

Given the findings of fact above, this investigation concludes that Mr. Acevedo has engaged in a persistent and pervasive pattern of unwelcome, verbal and physical conduct that is sexual in nature. Multiple witnesses corroborated or independently reported similar conduct by Mr. Acevedo:

- that was both verbal and physical in nature;
- that occurred on a daily basis;
- that was directed with frequency and overtly at female professional staff and student employees as well as at female students in the dining hall;
- that occurred in a relatively closed context of the dining hall workplace during work hours;
- that continued to occur, even after he was admonished repeatedly by at least two witnesses;
- that made many employees feel uncomfortable and upset.

None of the complainants reported that they were impacted to the degree that they felt they had to leave their job or could not carry out their jobs. However, an employee does not have to leave employment in order to prove the existence of a hostile work environment. On the contrary, an employee may feel the continuing impact of sexually inappropriate conduct in the workplace *and* remain on the job because of the pressure to remain employed and have a stable income. Employees such as Ms. [REDACTED] who is [REDACTED], are not likely to leave employment in spite of workplace conditions because of the overriding need for economic stability. Given all these factors, this investigation concludes that a reasonable person would find, as did the complainants, that Mr. Acevedo's conduct was intimidating, hostile, and/or offensive and that he therefore created a hostile work environment.

In the end, it is the totality of the circumstances that determines the outcome of this investigation. In this case, the numerous incidents reported over a long period of time, as well as the previous reports to the Title IX Office about Mr. Acevedo's conduct, point to a continuing pattern of unwelcome and inappropriate behavior that has created a hostile work environment for professional and student employees in the College [REDACTED] Dining Hall. As such, this investigation finds that there is a preponderance of evidence to support a finding that Mr. Acevedo's conduct constitutes sexual harassment in violation of the *UC Santa Cruz Policy on Sexual Harassment*.

Appendix A: Older UC and UCSC policy definitions of sexual harassment

February 2006: UC Policy

February 2012: UCSC policy

December 2012: UCSC policy

B. Definition of Sexual Harassment

Sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when submission to or rejection of this conduct explicitly or implicitly affects a person's employment or education, unreasonably interferes with a person's work or educational performance, or creates an intimidating, hostile or offensive working or learning environment. In the interest of preventing sexual harassment, the University will respond to reports of any such conduct.

Sexual harassment may include incidents between any members of the University community, including faculty and other academic appointees, staff, coaches, housestaff, students, and nonstudent or non-employee participants in University programs, such as vendors, contractors, visitors, and patients. Sexual harassment may occur in hierarchical relationships or between peers, or between persons of the same sex or opposite sex.

In determining whether the reported conduct constitutes sexual harassment, consideration shall be given to the record of the conduct as a whole and to the totality of the circumstances, including the context in which the conduct occurred.

February 24, 2014: UC policy

March 2014: UCSC policy

June 17, 2015: UC interim policy

Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment is conduct that explicitly or implicitly affects a person's employment or education or interferes with a person's work or educational performance or creates an environment such that a reasonable person would find the conduct intimidating, hostile, or offensive. Sexual harassment includes sexual violence (see definition below). The University will respond to reports of any such conduct in accordance with the *Policy*.

Sexual harassment may include incidents between any members of the University community, including faculty and other academic appointees, staff, student employees, students, coaches, residents, interns, and non-student or non-employee participants in University programs (e.g., vendors, contractors, visitors, and patients). Sexual harassment may occur in hierarchical relationships, between peers, or between individuals of the same sex or opposite sex. To determine whether the reported conduct constitutes sexual harassment, consideration shall be given to the record of the conduct as a whole and to the totality of the circumstances, including the context in which the conduct occurred.